IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AM PATHAK,

Versus

STATE BANK OF INDIA, THROUGH ASSTT GENERAL MANAGER (A & A)

Appearance:

MR AJ SHASTRI for Petitioner

MR PRANAV G DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/05/2001

ORAL JUDGEMENT

Pursuant to the order dated 8.12.2000 passed by this Court in the present petition, the petitioner made a representation which has been considered by the Bank and by order dated 6.1.2001 it has been decided by the Bank as under :-

"The monthly pension and the balance amount

payable by the Bank to the petitioner is to be appropriated towards the excess amount paid by the Bank by way of provident fund subject to payment of Rs.2000/- per month by the Bank to the petitioner. Further, simple interest is to be calculated at the rate of 10.50% p.a. on the outstanding amount from the date of excess payment received by the petitioner on 16.5.1995."

3. Mr Shastri, learned counsel for the petitioner submits that in the first place, the excess amount was not misappropriated by the petitioner. May be, the amount was paid by the Bank by mistake, but there was no question of the petitioner leading the Bank to commit any mistake. Hence, the petitioner had not misappropriated any amount. He further submits that the interest should not be charged on the amount being recovered from the petitioner and thirdly it is submitted that even the amount of Rs.2000/- per month required to be paid to the petitioner as per the order dated 16.1.2001 is not being paid to the petitioner till today.

4. As far as the non-payment of Rs.2000/- per month is concerned, Mr Pranav Desai, learned counsel appearing for the Bank states that this part of the direction of the Chief General manager shall be carried out within fifteen days from today and the arrears at the rate of Rs.2000/- per month for the months of January to April, 2001 shall be paid to the petitioner by 15.5.2001.

5. As far as the rate of interest is concerned, Mr Desai submits that since it is simple interest at 10.50% p.a., the rate of interest may not be considered to be unreasonable.

In the peculiar facts and circumstances of the case, particularly in view of the fact that the excess amount was paid over by the Bank more on account of the mistake on the part of its staff members rather than any act of commission on the part of the petitioner and also considering the personal hardships and family circumstances of the petitioner, it would be just and proper to require the petitioner to make a representation to the Bank for waiver of interest or reducing the rate of interest. If such a representation is made within fifteen days from today, the same shall be considered sympathetically within two months thereafter.

6. As far as the allegation made about misappropriation is concerned, it appears that this is an inference drawn by the Bank only on the ground that the

petitioner should have informed the Bank about excess payment made to him and since that was not done, the Bank has sought to infer an mala fide intention on the part of the petitioner. It appears that merely because the petitioner did not point out the mistake which might have taken place on the part of the some other staff member, it cannot be said that the petitioner had misappropriated the amount.

In this view of the matter, the Bank shall consider the petitioner's representation for waiver of interest/reduction in the rate of interest without considering any act or omission on the part of the petitioner as misappropriation as stated above and shall consider the petitioner's representation sympathetically within the aforesaid time limit.

7. The petition is accordingly disposed of in terms of the aforesaid observations and directions. Rule is discharged with no order as to costs.

Liberty to apply in case of difficulty.

(M.S. Shah, J.)

sundar/-